

ANN BIRMINGHAM SCHEEL
Acting United States Attorney
District of Arizona

JOHN BOYLE
Assistant U.S. Attorney
Arizona State Bar No. 015640
MICHAEL T. MORRISSEY
Assistant U.S. Attorney
Arizona State Bar No. 012531
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
Telephone: (602) 514-7500
john.boyle@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America

Plaintiff,

v.

Dennis Mahon,

Defendant.

CR-09-00712-PHX-DGC

**GOVERNMENT'S OBJECTION TO
PRESENTENCE REPORT**

The government hereby submits its objection to the Presentence Report.

U.S.S.G. § 3A1.4(a)

The guideline calculation should include a 12-level enhancement pursuant to United States Sentencing Guideline § 3A1.4. This guideline states: "3A1.4(a) If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32." Pursuant to Application Note One, a "'federal crime of terrorism' has the meaning given that term in 18 U.S.C. 2332b(g)(5)." This statute states:

(5) the term "Federal crime of terrorism" means an offense that--

(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and;

(B) is a violation of-- ...844(i) (relating to arson and bombing of property used in interstate commerce)....

Dennis Mahon's convictions in Counts One and Two satisfy the requirements for this enhancement. As a part of the jury instruction for Count One, the government was required to prove beyond a reasonable doubt that the object of the offense was to "promote racial discord on behalf of the White Aryan Resistance by damaging and destroying buildings" of government and businesses. Dennis Mahon chose to influence and affect the conduct of government when he chose Donald Logan and the City of Scottsdale Office Diversity and Dialogue. The verdicts of guilt on these two counts prove this enhancement. Additional evidence presented at trial also proves the enhancement. Dennis Mahon repeatedly stated that he was a terrorist, called this government office to threaten that "there's a few white people who are standing up," ^{1/} possessed the White Resistance Manual that specifically described assassination and terrorism ^{2/}, taught tactics of terrorism to the informant, discussed with Tom Metzger that the goal of WAR was "racial terrorism," ^{3/} and publicly advocated domestic terrorism through violent insurgency ^{4/}.

This enhancement was found to be applicable in recent terrorism-related cases. See United States v. Ressam, 2012 WL 762986, 1 (9th Cir. 2012)(*en banc*)(§ 3A1.4 enhancement applied in relation to the conspiracy to bomb Los Angeles International Airport on New Year's Day 2000). ^{5/} The enhancement was also applied in the conviction and sentencing of one of Ressam's co-conspirators, where the court noted the extreme danger posed by terrorism.

^{1/} See Exhibit 171, September 26, 2003 recording.

^{2/} See Exhibits 35-41, including specific reference in Exhibit 41 to "terror attack against non-Whites."

^{3/} See Exhibit Three, March 15, 2008 recording of discussion between Dennis Mahon and Tom Metzger that "race is the most powerful weapon that's around... the only thing that can trump their economic terrorism is racial terrorism."

^{4/} See Exhibit One, 2007 National Geographic Interview. Dennis Mahon: violence "is the only goddamn thing the government understands...they also understand Tim McVeigh and guy's that are-know how to be violent in the right way to get the job done.. it's guerilla warfare.....maybe with a little bit of violence we could get the government's attention."

^{5/} The defendant's sentence in Ressam was vacated "as substantively unreasonable" because of the district court's significant downward variance, and remanded for resentencing.

“Congress and the Sentencing Commission had a rational basis for concluding that an act of terrorism represents a particularly grave threat because of the dangerousness of the crime and the difficulty of deterring and rehabilitating the criminal, and thus that terrorists and their supporters should be incapacitated for a longer period of time.”^{6/} United States v. Meskini, 319 F.3d 88, 92 (2d Cir. 2003)(affirming § 3A1.4 enhancement and 288-month sentence for convictions of material support to terrorists, in violation of Sections 371, 844(i), 2332(a)(1)(B), and five counts of fraud in relation to the conspiracy with Ressam to bomb LAX). See also, United States v. Jayyousi, 657 F.3d 1085, 1114–15 (11th Cir. 2011) (holding that terrorism enhancement under § 3A1.4 applied when purpose of defendants' activity is calculated to promote a terrorism crime regardless of defendants' personal motivations); United States v. Awan, 607 F.3d 306, 316–18 (2d Cir. 2010)(holding that for § 3A1.4 enhancement the government need not show that defendant was personally motivated to influence government if it shows that he intended to promote a crime calculated to have such an effect).
U.S.S.G. § 3A1.4(b).

Pursuant to U.S.S.G. § 3A1.4(b), Defendant’s criminal history category should be VI. The subsection states: (b) In each such case, the defendant's criminal history category from Chapter Four (Criminal History and Criminal Livelihood) shall be Category VI.”

Respectfully submitted this 1st day of May, 2012.

ANN BIRMINGHAM SCHEEL
 Acting United States Attorney
 District of Arizona

s/ John Boyle
 JOHN BOYLE
 Assistant U.S. Attorney

CERTIFICATE OF SERVICE

^{6/} This quotation is also cited in Ressam, at 10.

1 I hereby certify that on May 1, 2012, I electronically transmitted the attached document to the
2 Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic
Filing to the following CM/ECF registrants:

3 Deborah L. Williams, Attorney for Dennis Mahon

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